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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/652,993	08/31/2000	Vishnu K. Agarwal	501082.04	4012

27076 7590 12/01/2004

DORSEY & WHITNEY LLP  
INTELLECTUAL PROPERTY DEPARTMENT  
SUITE 3400  
1420 FIFTH AVENUE  
SEATTLE, WA 98101

EXAMINER

DIAZ, JOSE R

ART UNIT PAPER NUMBER

2815

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/652,993	<b>Applicant(s)</b> AGARWAL, VISHNU K.	
	<b>Examiner</b> José R. Díaz	<b>Art Unit</b> 2815	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4, 76, 77, 81-85 and 89-92 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4, 76, 77, 81-85 and 89-92 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/29/04, 7/26/04</u> . | 6) <input type="checkbox"/> Other: _____  |

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**DETAILED ACTION*****Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 4, 76-77, 81-85, 89-92 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over:

- a. Claims 1-11 of U.S. Patent No. 6,472,264 B1
- b. Claims 1-2 of U.S. Patent No. 6,468,854 B1
- c. Claims 1-5 of U.S. Patent No. 6,720,215 B1
- d. Claims 1-2 of U.S. Patent No. 6,607,975 B1
- e. Claims 1-3 of U.S. Patent No. 6,479,340 B1
- f. Claims 1-7 of U.S. Patent No. 6,489,194 B1

Although the conflicting claims are not identical, they are not patentably distinct from each other because the species or sub-genus claimed in the conflicting patents anticipate the claimed genus in the application being examined and that a patent to a

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genus would therefore extend the rights of the species or sub-genus should the genus issue as a patent after the species or sub-genus.

3. Claims 4, 76-77, 81-85, 89-92 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over:

- a. Claims 43, 78, 84, and 86-87 of copending Application No. 09/652,968
- b. Claims 79-81 of copending Application No. 09/652,842
- c. Claims 54, 56, 76, and 78-99 of copending Application No. 09/652,580
- d. Claims 91, 93-98, and 106-110 of copending Application No. 09/652,841
- e. Claims 37-39, 76-80, and 82-99 of copending Application No. 09/652,968

Although the conflicting claims are not identical, they are not patentably distinct from each other because the species or sub-genus claimed in the conflicting copending applications anticipate the claimed genus in the application being examined and that a patent to a genus would therefore extend the rights of the species or sub-genus should the genus issue as a patent after the species or sub-genus.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### ***Terminal Disclaimer***

4. The terminal disclaimer filed on September 14, 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent Nos. 6,472,264 B1, 6,468,854 B1, 6,720,215 B1, 6,607,975 B1, 6,479,340 B1 and 6,489,194 B1, and any patent granted on Application

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Numbers 09/652,968, 09/652,842, 09/652,580, 09/652,841 and 09/652,968 has been reviewed and is NOT accepted.

The applications being disclaimed have been improperly identified since the numbers used to identify the applications being disclaimed are incorrect. The correct numbers are 09/652,968, 09/652,842, 09/652,580, 09/652,841 and 09/652,968.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Correspondence***

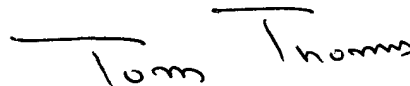
Any inquiry concerning this communication or earlier communications from the examiner should be directed to José R. Díaz whose telephone number is (571) 272-1727. The examiner can normally be reached on Monday through Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Thomas can be reached on (571) 272-1664. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JRD  
11/29/04

A handwritten signature in black ink that reads "Tom Thomas". The signature is written in a cursive, slightly stylized font.

TOM THOMAS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800